

ESTTA Tracking number: **ESTTA664378**

Filing date: **04/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Riverstone Ventures LLC
Granted to Date of previous extension	04/01/2015
Address	17501 W. 98th Street Pillar 18-55 Lenexa, KS 66219 UNITED STATES
Attorney information	Joan Optican Herman/Cheryl L. Burbach Hovey Williams LLP 10801 Mastin Blvd., Suite 1000 Overland Park, KS 66210 UNITED STATES jherman@hoveywilliams.com, cburbach@hoveywilliams.com, litigation@hoveywilliams.com Phone:913-647-9050

Applicant Information

Application No	86331626	Publication date	12/02/2014
Opposition Filing Date	04/01/2015	Opposition Period Ends	04/01/2015
Applicant	NEAT PRINT INC Unit 188 Sarasota, FL 34232 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2013/09/24 First Use In Commerce: 2013/09/24
All goods and services in the class are opposed, namely: Clothing, namely, shirts, t-shirts, tank tops, tops, sweat shirts, hoodies, jerseys, pullovers, jackets and hats

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Failure to function as a trademark; Trademark Act Sections 1, 2 and 45

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	AWESOME AUNT		

Goods/Services	T-shirts and other apparel items
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THIS IS WHAT AN AWESOME AUNT LOOKS LIKE		
Goods/Services	T-shirts and other apparel items		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MY AUNT IS AWESOME, among other variations		
Goods/Services	T-shirts and other apparel items		

Attachments	Notice of Opposition_SN 86331626 (AWESOME AUNT).pdf(121454 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Cheryl L. Burbach/
Name	Cheryl L. Burbach
Date	04/01/2015

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RIVERSTONE VENTURES LLC,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	Serial No. 86/331,626
NEAT PRINT INC.,)	Mark: AWESOME AUNT
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer Riverstone Ventures LLC (“Riverstone”), a Kansas limited liability company, with an address of 17501 W. 98th Street, Pillar 18-55, Lenexa, Kansas 66219, believes that it will be damaged by the registration of U.S. Serial No. 86/331,626 for the mark AWESOME AUNT and hereby opposes registration of the same under § 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

The grounds for the opposition are as follows:

1. Applicant Neat Print Inc. (“Neat Print”), a Florida corporation, with an address of Unit 188, 5317 Fruitville Rd., Sarasota, Florida 34232, filed its use-based application on July 8, 2014, U.S. Serial No. 86/331,626 (“Application”), for the trademark AWESOME AUNT (“the Opposed Mark”) for “[c]lothing, namely, shirts, t-shirts, tank tops, tops, sweat shirts, hoodies, jerseys, pullovers, jackets and hats” in International Class 025 (“Neat Print’s Goods”). The United States Patent & Trademark Office (“USPTO”) published the Application for opposition in the *Official Gazette* on December 2, 2014, allowing time to oppose the Application up to and including January 1, 2015. On December 2, 2014, Riverstone filed a 90-Day Request for Extension of Time to Oppose the Application until April 1, 2015. The Trademark Trial and Appeal Board (“TTAB”)

granted Riverstone's First Request. Accordingly, Riverstone has timely filed this Notice of Opposition.

2. In prosecuting that application, Neat Print has claimed that at least as early as September 24, 2013, it first used the Opposed Mark in commerce with Neat Print's goods.

COUNT I:
LIKELIHOOD OF CONFUSION

3. Riverstone asserts this claim in accordance with Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), 37 C.F.R. § 2.101(b), and Section 18 of the Trademark Act.

4. Riverstone has been continuously using the "AWESOME AUNT", "THIS IS WHAT AN AWESOME AUNT LOOKS LIKE" and/or "MY AUNT IS AWESOME" trademarks ("Riverstone's AWESOME AUNT Marks"), among other variations, on t-shirts and other apparel items in commerce since at least as early as 2010. The date of first use of Riverstone's AWESOME AUNT Marks predates both the filing date of the subject application and Neat Print's alleged date of first use of its mark AWESOME AUNT.

5. By virtue of Riverstone's continuous use in commerce of its products bearing Riverstone's AWESOME AUNT Marks and of its extensive sales, advertising and promotion, Riverstone's AWESOME AUNT Marks have become well and favorably known to the relevant trade and public in connection with such goods.

6. Neat Print's use of the AWESOME AUNT trademark for Neat Print's Goods so resembles Riverstone's AWESOME AUNT Marks as to be likely to create confusion, mistake or deception under § 2(d) of the Trademark Act, 15 U.S. C. § 1052(d).

7. Further, the Opposed Mark is identical and/or nearly-identical to, and/or wholly incorporated within, both visually and aurally, Riverstone's well-known AWESOME AUNT

Marks. As a result, these two AWESOME AUNT marks have the same commercial connotations to consumers.

8. Consumers who encounter the phrase “AWESOME AUNT” in connection with Neat Print’s Goods, reasonably will believe that such products are affiliated with, sponsored endorsed or otherwise offered by Riverstone.

9. Neat Print’s Goods are closely related to, if not identical, and directly competitive with Riverstone’s Goods.

10. Neat Print’s Goods can or could be purchased by the very same class of purchasers and may be sold in the same trade channels as Riverstone’s Goods advertised and sold under Riverstone’s AWESOME AUNT Marks.

11. As the Application has no limitation on trade channels, Neat Print’s Goods are presumed to move through all of the ordinary and usual channels of trade for such goods, further exacerbating the likelihood of confusion between Neat Print’s AWESOME AUNT mark and Riverstone’s AWESOME AUNT Marks.

12. Riverstone has established substantial goodwill in connection with its AWESOME AUNT Marks. Having established such goodwill, Riverstone is entitled to protection against use of confusingly similar marks such as the Opposed Mark.

13. If the Opposed Mark is allowed to register, purchasers are likely to believe that the Opposed Mark and the goods offered in connection therewith originated with or are connected or associated with, or sponsored, licensed, endorsed or approved by Riverstone, all to Riverstone’s detriment. Undoubtedly, registration of the Opposed Mark will allow Neat Print to wrongfully appropriate Riverstone’s valuable goodwill and reputation associated with Riverstone’s AWESOME AUNT Marks.

14. By reason of the foregoing, Riverstone is likely to be harmed by registration of the Opposed Mark.

WHEREFORE, Riverstone believes that as a result of the likelihood of confusion and priority on Neat Print's AWESOME AUNT mark, Riverstone will be damaged by the registration of Neat Print's AWESOME AUNT mark and prays that the Board sustain this Notice of Opposition and refuse to register Serial No. 86/331,626.

COUNT II:
FAILURE TO FUNCTION

15. Riverstone incorporates the above-referenced paragraphs as if fully set forth herein.

16. Neat Print filed its application for the Opposed Mark under Section 1(a) of the Lanham Act, alleging a first date of use in commerce of September 24, 2013.

17. A photograph of Neat Print's specimen is shown below:



18. The Opposed Mark is incapable of functioning as a source-identifier for Neat Print's goods. Specifically, the phrase AWESOME AUNT on the tag in the image is clearly used to identify which ornamental phrase is being identified on the t-shirt, as opposed to the tag that is sewn into the shirt immediately behind Neat Print's tag. Purchasers will not perceive the applied-for mark as denoting the source of Neat Print's goods.

19. Further, upon information and belief, Neat Print has not used the Opposed Mark in commerce in connection with the goods listed in the application at issue, in derogation of Sections 1 and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051, 1127.

21. Upon information and belief, the Opposed Mark is not inherently distinctive and has not acquired distinctiveness as to the goods listed in the application at issue, in derogation of Sections 1, 2 and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051 - 1052, and 1127; TMEP §904.07(b).

22. Riverstone avers that, based on the rights afforded by federal registrations, Riverstone will be damaged by the unjustified registration by Neat Print of the Opposed Mark.

WHEREFORE, Riverstone believes and avers that it will be damaged by registration of the Opposed Mark as aforesaid, and prays that said Application Serial No. 86/331,626 be rejected, that no registration be issued thereon to Neat Print, and that this Opposition be sustained in favor of Riverstone.

Riverstone Ventures, LLC hereby appoints Joan Optican Herman and Cheryl L. Burbach and Hovey Williams LLP, 10801 Mastin Boulevard, Suite 1000, Corporate Woods, Building 84, Overland Park, KS 66210, as its representative upon whom notices and process in proceedings affecting this proceeding may be served.

Respectfully Submitted,

Dated: April 1, 2015

/s/Cheryl L. Burbach
Joan Optican Herman
Cheryl L. Burbach
HOVEY WILLIAMS LLP
10801 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
(913) 647-9050 - Phone
(913) 647-9057 - Fax

ATTORNEYS FOR RIVERSTONE
RIVERSTONE VENTURES, LLC

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF OPPOSITION to be served upon counsel for Applicant via e-mail and U.S. Mail this 1st day of April 2015:

Daniel R. Frijouf, Esq.
Frijouf, Rust & Pyle P.A.
201 East Davis Blvd.
Tampa, FL 33606
Tel. (813) 254-5100

/s/Cheryl L. Burbach
Cheryl L. Burbach